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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/447,472	11/23/1999	JAMES B. ARMSTRONG	533/049	3863
56015	7590	10/13/2005		
MOSER, PATTERSON & SHERIDAN, LLP/ SEDNA PATENT SERVICES, LLC 595 SHREWSBURY AVENUE SUITE 100 SHREWSBURY, NJ 07702			EXAMINER LAMBRECHT, CHRISTOPHER M	
			ART UNIT 2611	PAPER NUMBER

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/447,472

Applicant(s)

ARMSTRONG ET AL.

Examiner

Christopher M. Lambrecht

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

 **HAITRAN
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been considered but they are not persuasive. In particular, Applicant submits:

- (a) Ueno fails to teach partitioning of servers (Applicant's remarks, pp. 6-8);
- (b) Ueno fails to teach partitioning based on the frequency with which the video assets are requested (Applicant's remarks, p. 8);
- (c) Hokanson fails to teach a plurality of servers coupled to respective subscriber equipment, each of said servers having a primary storage partition for storing frequently requested video assets, each server having a secondary storage partition for storing a portion of infrequently requested video assets, etc..." (Applicant's remarks, pp. 8-9);
- (d) because of issue (c), Hokanson must therefore fail to teach infrequently requested video assets are divided and selectively distributed amongst the secondary storage partitions of the plurality of servers (Applicant's remarks, p. 9);
- (e) because the off-line storage facilities of Hokanson "cannot operate as server", Hokanson cannot teach dividing and selectively distributing infrequently requested assets amongst said secondary partitions of said plurality of servers (Applicant's remarks, pp. 9-10);
- (f) the combination of Ueno and Hokanson does not teach partitioning of servers, and therefore cannot teach "each of said servers having a primary storage partition for storing frequently requested video assets, each of said servers having a secondary storage partition for storing a portion of infrequently requested video assets, said infrequently requested video assets being divided and selectively distributed amongst said secondary storage partitions of said plurality of servers", and therefore claims 1 and 19 are not obvious and therefore patentable under 35 USC §103(a) (Applicant's remarks, pp. 10-11);
- (g) all claims dependent from claims 1 and 19 are therefore allowable for at least the same reasons, as none of the references relied upon in the rejections of the dependent claims are sufficient to cure the deficiencies of Ueno and Hokanson as applied to claims 1 and 19 (Applicant's remarks, pp. 11-15).

In response to (a), Examiner submits that Ueno is not solely relied upon to teach partitioning of servers (see rejection of claims 1 and 19 found in previous Office action).

In response to (b), Examiner maintains that Ueno teaches partitioning of video assets based on the frequency with which the assets are requested. In particular, column 18, lines 21-27 of Ueno very clearly disclose discriminating between "video sources having a relatively low frequency in access" and "video sources having a relatively high frequency in access." The meaning of "video sources" within the disclosure of Ueno is clearly commensurate with Applicant's definition of the claimed "video assets" (see Ueno, col. 1, ll. 31-38). Furthermore, the direct relationship between "access" and "demand" (i.e., request) is clearly established at column 18, lines 38-43 and elsewhere throughout the disclosure of Ueno.

In response to (c), Examiner submits that Hokanson is not solely relied upon to teach a plurality of servers coupled to respective subscriber equipment, etc... Rather, Hokanson is relied upon to teach that a server can be partitioned in order to achieve various benefits (see previous Office action).

In response to (d), Examiner reiterates Hokanson is not relied solely upon to teach the features Applicant alleges the reference fails to teach.

In response to (e), initially, Examiner maintains that Hokanson teaches partitioning a server, i.e., including in a server apparatus (132, fig. 5) at least a primary storage partition for storing frequently requested video assets and a secondary storage partition for storing infrequently requested video assets (see col. 10, ll. 35-49, particularly "hierarchy of different storage devices", lines 44-48, where the meaning of "rating" as used therein represents the frequency with which a particular video asset is requested, see col. 11, ll. 16-30). In addition, Examiner disagrees with Applicant's assertion that devices in Hokanson used for storing infrequently requested assets "cannot operate as a server." Column 11, lines 5-10 of Hokanson clearly disclose at least a "middle hierarchal level" of storage devices in which the content is available to be served in response to subscribers demand for viewing. Furthermore, column 11, lines 16-30 of Hokanson teach that in response to the content manager detecting increased demands to view said content, the content may be moved to yet a higher hierarchal level of storage devices, augmenting the availability of the content to meet the increased demand. Thus, the server's resources may be tailored to most efficiently meet subscriber demands. From at least the cited portions and elsewhere throughout the disclosure of Hokanson, it is clear Hokanson contemplates (in fact discloses) at least two distinct server partitions (i.e., storage devices with different cost/performance profiles) storing frequently requested video assets and less frequently (i.e., infrequently) requested video assets, both of which server/storage partitions/devices are available to respond to user requests for videos. Finally, Hokanson is not solely relied upon to teach said infrequently requested video assets being divided and selectively distributed amongst said secondary storage partitions of said plurality of servers (see previous Office action).

In response to (f), Examiner maintains that the Ueno and Hokanson references, in combination, render obvious the subject matter noted by Applicant. In particular, the Ueno reference describes a plurality of geographically or regionally disparate interactive television servers interconnected for the purpose of continuously allocating video content throughout based on the popularity of the individual content items, where the popularity is measured by the frequency with which the content items are requested by subscribers (see fig. 10 and related text). The cited portions of the Hokanson reference explicitly describe an improvement in management of server resources in the context of an interactive television server (see fig. 5 and related text), namely, providing a server with a plurality of storage devices (i.e., storage partitions) exhibiting different cost/performance balances, in order maximize the quantity of content stored thereupon and the number of subscribers to which the stored content is available while minimizing content request response times and headend operation costs. One of ordinary skill in the art would readily have recognized the applicability of the improvements in the interactive television server of Hokanson to each of the geographically or regionally disparate interactive television headends of Ueno. Accordingly, as an initial step, the system resulting from the combined teachings of Ueno and Hokanson would comprise a plurality of servers coupled to respective subscriber equipment, as claimed, each of said servers having respective primary and secondary storage partitions, as claimed, and each of said primary and secondary storage partitions of each server respectively storing therein frequently and infrequently requested content, as claimed. The modification of the system of Ueno to include the content manager as described by Hokanson for the migration of assets between the primary and secondary storage partitions of each of the video servers based on frequency of request follows logically from the combination in order to obtain the benefits contemplated by Hokanson. As such, all that remains to be taught of the claimed subject matter Applicant alleges to be lacking in the proposed combination is "said infrequently requested video assets being divided and

selectively distributed amongst said secondary storage partitions of said plurality of servers." Examiner submits that given a system comprising a plurality of video servers (as taught by Ueno) each comprising said primary and secondary storage partitions storing frequently and infrequently video assets, respectively (as taught by Hokanson), there exists a set of infrequently requested video assets residing on (i.e., distributed amongst) each of the secondary storage partitions of the plurality of servers. Furthermore, because the aggregate set of infrequently requested assets residing in the system as a whole is the sum of the infrequently requested assets stored at each individual server, the set of infrequently requested assets as a whole is therefore "divided" amongst the secondary storage partitions of each of the plurality of servers. Moreover, the mere presence of infrequently requested assets on the secondary storage partitions of each of the plurality of servers is evidence of "distribution" thereto, inherently the result of some form of "selection." Thus, the infrequently requested assets are "selectively distributed" for at least this reason. Finally, the claimed "being" in the context of the claim merely requires that the whole of the infrequently requested assets exist in a state or condition of division and selective distribution amongst the secondary storage partitions of each of the servers, which, as discussed above, Examiner submits is a direct result of the proposed combination. Therefore, Examiner maintains the combined teachings of Ueno and Hokanson teach "said infrequently requested video assets being divided and selectively distributed amongst said secondary partitions of said plurality of servers." Accordingly, the subject matter of claims 1 and 19 is met by the combination of Ueno and Hokanson.

In response to (g), Examiner submits all additional arguments with respect to the patentability of independent claims 1, 19, and claims dependent respectively thereupon, are contingent upon the issues raised by Applicant as addressed above. Examiner believes all such issues to be alleviated, and accordingly all claims pending in the application stand rejected.